

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 297 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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JIVANLAL SOMNATH PATEL

Versus

PATEL MAHENDRABHAI RAMABHAI

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Appearance:

MR MAULIN R RAVAL for Petitioner

MR HR PRAJAPATI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 04/04/96

ORAL JUDGEMENT

1. Rule. Mr. H.R. Prajapati waives service of rule on behalf of the respondent. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.

2. It appears that in HRP suit filed by the

respondent landlord against the petitioner defendant, demand was made for arrears of rent inter alia contending that the standard rent of suit premises was Rs. 1,875/per month and that such rent was due from 30th November, 1992 to 31st January, 1995. To such a suit, written statement was filed and dispute of standard rent was raised. However, since the tenant failed to pay up the arrears of rent or to deposit the amount of rent in the trial court, an application under Sec. 11(4) of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947 was filed for fixation of interim rent and to call upon the tenant to deposit such interim rent, failing which to strike off his defence. The tenant unfortunately did not file any reply to such application. The tenant did not appear personally or through his advocate. The trial court has thereupon fixed the interim rent at the rate Rs. 1,875/- per month and has called upon the tenant to pay up the entire arrears of rent at the interim rent fixed by the trial court.

3. On Civil Revision Application No. 31 of 1991 being preferred to the appellate bench of the Small Causes Court, the same came to be rejected by judgment and order dated 4th of January, 1994 which has given rise to the present Civil Revision Application.

4. It shall have to be stated that the order passed by the trial court below application under Sec. 11(4) is in substance an ex parte order. The tenant has not filed reply to the application under Section 11(4) of the rent Act. The tenant has not even produced any evidence. The trial court has simply relied upon the averments made by the landlord in his application, believed that the rent of the premises was Rs. 1,875/- per month. The case of the landlord is that initially the rent of the premises was Rs. 625/- per month and there was an oral agreement between the parties to increase the rent from Rs. 5 per square yard to Rs. 10/- per square yard at the interval of 5 years every time. In support of such pleading of oral agreement, no evidence was produced before the trial court excepting the affidavit evidence. No counterfoil receipt is also forthcoming to show that the landlord has received the amount of rent at a higher rate. The landlord has also not produced his rojmel or account books showing that he has credited the higher amount of rent in his books of accounts. In absence of thereof, the trial court and the appellate bench of the Small Causes Court were wholly unjustified in passing an order of fixation of standard rent at the rate of Rs. 1,875/per month. In fact, there was no basis for passing such order. To accept the averments of one party without

applying mind at all to the provision of law, is the arbitrary exercise of power. There cannot be any more arbitrary, whimsical and callous order than the one which is exhibited before this Court by the trial court as well as by the appellate bench of the Small Causes court. In view of the aforesaid, the judgment and order of the two courts below are quashed and set aside. The tenant is directed to pay the amount of Rs. 1,000/- (Rupees one thousand only) per month as interim rent and the trial court is directed to decide application under Section 11(4) afresh after permitting the tenant to file his reply to the application within three weeks from today and after hearing the parties and permitting the parties to produce whatever evidence they want to produce in support of their contentions. The tenant shall deposit the amount of arrears of rent at the rate of Rs. 1,000/per month within two weeks from today. In case, the arrears of rent as directed by this Court is not deposited in the trial court, the trial court shall be at liberty to strike off the defence of the tenant and to proceed to decide the suit without any defence of the tenant. Rule is made absolute accordingly. There shall be no order as to costs.

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